

Compensation Consistency with 2008 Mitigation Rule

Issues Identified

- Currently the general permit regulations indicate that onsite, in-kind compensation shall be deemed the most ecological preferable form of compensation. This conflicts with “Compensatory Mitigation for Losses of Aquatic Resources” (2008 Federal Mitigation Rule) codified at 33 CFR Parts 325 and 332 and 40 CFR Part 230.

Issues Identified

- DEQ's GM 09-2004 indicates that VWPP permit staff will follow the rule's preference unless unique circumstances at the impact site provide an ecologically preferable offset of impacts
- The language in the main compensation regulation at 9VAC25-210-116 is outdated and not consistent in some places

Issues Identified

- 2008 Mitigation Rule requires long-term management of permit-specific compensation sites.
 - Currently permit specific compensation requires use of DEQ and USACE's Restrictive Covenant template and does not require long term management. The restrictive covenant is difficult to enforce after the expiration of the permit.

Considerations

- Revise the compensation regulation to provide consistency, reduce regulatory burden, and eliminate contradictory and/or duplicative compensation requirements between state and federal wetland regulatory programs

Examples of possible revisions

- Revise 9VAC25-210-116, 9VAC25-690-70, and any other corresponding GP sections to state the sequence of preferred compensation is:
 - 1) mitigation bank credits and in-lieu fee released credits
 - 2) in-lieu fee advance credits
 - 3) permittee-responsible mitigation using a watershed approach
 - 4) permittee-responsible mitigation (onsite and in-kind mitigation) with consideration for its compatibility with the proposed project
 - 5) permittee-responsible mitigation (off-site and/or out-of-kind)

Examples of possible revisions

- Revise the application compete section outlining the requirements of conceptual creation, restoration, enhancement, or preservation plans to require a third party easement holder or restrictive covenant with long term management plan, including funding and long term steward [9VAC25-210-80.B.1.k(5)]

Examples of possible revisions

- Revise regulation to require that permittee-responsible compensation be protected by third party easement or restrictive covenant with long term management plan, including long term steward [9VAC25-210-116.B.2]

Examples of possible revisions

- Revise any other language to reflect new sequencing concepts or match other revisions regarding compensation